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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929

No. 509

THE UNITED STATES OF AMERICA, APPELLANT

vs.

FRANCISCO UNZEUTA

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA

FILED DECEMBER 9, 1929

(34640)

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[Caption omitted.]

3 In United States District Court, District of Nebraska

Indictment

Filed Sept. 5, 1929

In the District Court of the United States, within and for the Chadron division of the District of Nebraska, in the Eighth Judicial Circuit.

The grand jurors of the United States of America, drawn from the territory comprising the Omaha, Norfolk, Chadron, Grand Island, and North Platte divisions of the District of Nebraska, and sitting in the Omaha division of said district in the term beginning April 1, 1929 being first duly empanelled, sworn, and charged by said court to inquire within and for said divisions, upon their oaths do present and say:

That by Executive orders of the President of the United States of America of November 14, 1876, June 28, 1879, and November 4, 1879, there were reserved from the public lands of the United States of America for the exclusive use of said United States of America for a military reservation at Fort Robinson (formerly Camp Robinson), in the State of Nebraska, three contiguous tracts of land aggregating in area about thirty-six square miles; that all said land so reserved for said Fort Robinson Military Reservation lies within the geographical limits of the counties of Dawes and Sioux in the State of Nebraska and within the Chadron division of the District of Nebraska and within the jurisdiction of this court; that all said lands so reserved for the exclusive use of said United States of America for said Fort Robinson Military Reservation is now, and ever since the dates of said Executive orders had been, continuously owned and occupied and used by said United States of America as a military reservation; that said Fort Robinson Military Reservation is now, and at all times since the dates of said Executive orders reserving said lands for a military reservation as above set forth has been, under the exclusive jurisdiction of said United States of America.

That by acts of the legislature of the State of Nebraska, approved March 29, 1887, and March 29, 1889, the State of Nebraska ceded to said United States of America whatever jurisdiction said State of Nebraska may or might have had over said Fort Robinson Military Reservation.

4 And the grand jurors aforesaid, upon their oaths aforesaid, do further present and say that at about 10 o'clock on the night of July 24, 1929, while the defendant, Francisco Unreuta, was riding on a freight car in a freight train being operated upon and over the railroad tracks of the Chicago and Northwestern Railway Company within and upon said Fort Robinson Military Reser-

vation and at a point on said Fort Robinson Military Reservation about one mile southwest of the Fort Robinson railway station located on said Fort Robinson Military Reservation, said defendant, Francisco Unzeuta, then and there being within the Chadron division of the District of Nebraska and within the jurisdiction of this court, did then and there, with premeditation and malice aforethought, unlawfully, wilfully, deliberately, maliciously, and feloniously kill one Omer Robertson (who was riding on the same freight car as said defendant, Francisco Unzeuta) by shooting from a 38-caliber revolver, had and held by said defendant, Francisco Unzeuta, two bullets into the body of said Omer Robertson; that said Omer Robertson then and there on said 24th day of July, 1929, on said Fort Robinson Military Reservation, died as a result of said gunshot wounds inflicted upon him, the said Omer Robertson, by said defendant, Francisco Unzeuta, as hereinbefore set forth; that by killing said Omer Robertson with premeditation and malice aforethought on and within the limits of said Fort Robinson Military Reservation, and in the manner hereinbefore set forth, said defendant, Francisco Unzeuta, committed murder in the first degree on said Fort Robinson Military Reservation, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

EDSON SMITH,
Assistant United States Attorney
for the District of Nebraska.

5 [Indorsed: No. 6062. 242 Cr. United States District Court, District of Nebraska, Chadron Division.]

7 In United States District Court, District of Nebraska, Chadron Division

UNITED STATES OF AMERICA v. FRANCISCO UNZUETA, DEFENDANT

Plea to jurisdiction

Filed Sept. 10, 1929

And now comes defendant, whose correct name is Francisco Unzueta, and in his own proper person, having heard the said indictment read, says that the said court here ought not to take cognizance of the trespass and other crime sought to be charged therein in said indictment, because, protesting that he is not guilty of the same or any misdemeanor, nevertheless the said Francisco Unzueta says:

It is not true that ever an act of Congress reserved the lands or any public lands in Sioux County or Dawes County, Nebraska, within this division for purposes or uses as Camp Robinson, nor Fort Red Cloud, nor Fort Robinson; and by the law of the land, no act of the Executive department may consecrate or set aside or

designate of public lands for purposes as a fort, but only an act of the Congress might do so; and that no such act nor any act nor Executive order did designate any portion of section 26 or section 25, township 33, north of range 53, whereat was committed the supposed and alleged assault sought to be charged in the said indictment; and this defendant further says that the railroad whereon it is alleged the said misdemeanor and crime and assault were committed was, at the alleged date, and ever has been since the erection of said railroad across sections 13 and 24 and 25 and 26 in said township and range aforesaid, in the year 1886, by Fremont, Elkhorn, and Missouri Valley Railroad Company, a Nebraska corporation, and none other, a post road of the State of Nebraska and highway for the use of said State of Nebraska and the carriage of mails between the county seats of the named counties; that by the law of the land the same was and yet is an agency and public utility of
8 the said State and not of the United States, and which is wholly within the jurisdiction of the State of Nebraska and might not be surrendered by the said State of Nebraska unto any sovereignty to the detriment of and deprivation of defendant of his constitutional rights, that is to say:

The defendant was seized and arrested by the sheriff of Sioux County, Nebraska, in which said county it is claimed to be the fact that the fatal shot alleged in the indictment was fired and at a place therein where the said Sioux County, Nebraska, and its courts of competent jurisdiction have exclusive or concurrent jurisdiction with the courts of the United States for the prosecution and punishment of the crime of murder; and said sheriff of the State of Nebraska detained this defendant in jail; and under direction of county attorney of county of Sioux and State of Nebraska, and under promises made to defendant that he, said defendant, and his fellow Mexicans, arrested at the same time and place and under this same charge of murder of Omer Robertson, would improve his situation and would be dealt with more gently if defendant would make a statement of the facts, the said State of Nebraska procured and induced from defendant and his associates and friends statements made through and to an interpreter produced by said State of Nebraska; and that afterwards the said State of Nebraska and its sheriff and its county attorney did release and surrender unto the United States of America and its officials of this court the person and custody of defendant, which was and is without the consent or procurement, and is against the will of defendant.

And defendant says that by the laws of the State of Nebraska the punishment for one convicted of crime of murder in the first degree shall be by the humane and painless act of electrocution in the State penitentiary; that by the laws of the United States of America the punishment for that grade of crime is by the painful, cruel, and unusual act of hanging; that the surrender of defendant unto the United States authorities by the sheriff and county attorney

of Sioux County, Nebraska, is an unlawful and unconstitu-
9 tional deprivation of defendant of all and every constitutional right of prosecution, trial, and punishment, which are assured defendant by treaties and constitutions of State and of the United States, of all of which statutes and treaties and constitutional provisions and the want of any enactment of the Congress to create any fort or camp at the county of Sioux, in the State of Nebraska, this court has judicial knowledge, and this defendant is ready to verify; wherefore, he prays judgment if the said court now here will or ought to take cognizance of the indictment aforesaid, and that by the court here he may be dismissed and discharged from the said premises in the said indictment above specified.

But reserving unto himself all exceptions and all manner of rights under said treaty and constitutions and laws and privileges herein set out by himself and such as shall be set out herein at length, if the Honorable James C. Kinsler, Esq., who prosecutes in the name and behalf of the United States of America as United States attorney for the district of Nebraska, shall deny this plea and put himself upon the country in that behalf, then this Francisco Unzueta for himself and in his own proper person doth allege and declare the fact to be: The said named defendant was born in the city of Canatlan and State of Durango and Republic of Mexico, but of Castilian parentage and descent, and he is and has been since his birth in the year 1904 at said city a citizen, resident, and inhabitant of said city and State; and defendant, by compliance with the laws of United States and the treaty between the United States of America and the Republic of Mexico, was and is lawfully within the United States as a farm laborer, which occupation he had been continuously and was peacefully and industriously pursuing in the sugar-beet growing regions of the States of South Dakota and of Montana, and this defendant was, on July 24, 1929, lawfully in interstate commerce, transferring himself via the post road, described in the foregoing paragraph hereof, from the town of Nisland, in the State of South Dakota, unto the city of Casper, in the State of
Wyoming, where is the employment agency having relations
10 with this defendant in capacity of laborer and employer in beet-raising farming now and heretofore.

And defendant says that by virtue of the treaty above mentioned, made for his enjoyment and protection as well as of all other naturals of Republic of Mexico, and by virtue of the most-favored-nation's clause in said treaty, this defendant is entitled to and he requests that his plea to the jurisdiction of this court shall be tried to a jury composed of equal number of citizens of Mexico now domiciled in the State of Nebraska and of citizens of this Government, State, and division of this court.

FRANCISCO UNZEUTA, *Defendant.*

11 [*Duly sworn to by Francisco Unzeuta; jurat omitted in printing.*]

[File indorsement omitted.]

12 In United States District Court

UNITED STATES OF AMERICA, PLAINTIFF
vs.
FRANCISCO UNZEUTA, DEFENDANT
Number 242, Criminal

Judgment

Filed Nov. 5, 1929

This cause having heretofore been submitted to the court upon the defendant's plea to the jurisdiction, the court, upon full consideration of the said plea and of the indictment herein returned, finds that this court is without jurisdiction over the alleged offense set forth in the indictment to which said plea is directed.

The court finds that the United States of America has not exclusive jurisdiction over the strip of land comprising the right of way of the Chicago and Northwestern Railway Company through the Fort Robinson Military Reservation in the State of Nebraska, nor upon said railway company's train of cars situate thereon whereon the homicide charged in said indictment is alleged to have been committed.

The court finds that the granting of said right of way to the said railway company was an abandonment by the United States of its use of said right of way for military purposes, and thereby the United States ceased to have exclusive jurisdiction over the same, to all of which findings the plaintiff is allowed an exception.

It is therefore ordered by the court that the said plea to the jurisdiction of this court be, and the same is hereby, sustained and that the defendant, Francisco Unzeuta, be, and he is hereby, discharged and this action dismissed, and the United States marshal is directed to release him from custody and also to release Manuel Cardones and Eriberts Contreras, who are held in custody as witnesses for the Government, to which the plaintiff is allowed an exception.

But the United States attorney for the district of Nebraska here gives notice that the United States intends to perfect an ap-
13 peal from this judgment of the court and asks that the defendant be not discharged until such appeal may be perfected.

It is therefore ordered by the court that this judgment be not given effect so far as it relates to the discharge from custody of the said defendant and the witnesses above named until thirty days from and after the date hereof, but that upon the perfecting of said appeal the said defendant and the said witnesses be and they are hereby granted the privilege of entering into their own recognizance to appear in court in answer to the said indictment so returned against them in the event that the appellate court reverses this judgment.

Dated this 4th day of November, 1929.

J. W. WOODROUGH,
United States District Judge.

[File indorsement omitted.]

14 In United States District Court

[Title omitted.]

Opinion on plea to jurisdiction

Filed Nov. 5, 1929

By the court.

WOODROUGH, District Judge:

The defendant is indicted for a murder charged to have been committed on a freight car in a freight train being operated upon and over the railroad tracks of the C. & N. W. Ry Co. within and upon the Fort Robinson Military Reservation within the Chadron division of the district of Nebraska.

By plea to the jurisdiction the defendant, among other things, presents that the place of the alleged murder specified in the indictment was not "a place within the exclusive jurisdiction of the United States." The status of Fort Robinson as a military reservation within the exclusive jurisdiction of the United States has been settled for this court and is not now open to question. This court has tried a number of criminal cases where the acts were committed upon the reservation and has sustained the jurisdiction because the reservation is and has long been within the exclusive jurisdiction of the United States. None of these cases are reported, but Judge Shiras reviews the history of the reservation and establishes the conclusion for the Federal court in the published opinion in re Ladd, 74 Fed. 31, and the fact that it is a military reservation under the exclusive jurisdiction of the United States is confirmed for State authorities by the Supreme Court of Nebraska in Anderson vs. C. & N. W. Ry. Co. 102 Neb. 578.

15 But conceding the exclusive jurisdiction of the United States over the reservation, the question remains whether the trains being operated upon the railroad right of way and the strip of right-of-way land which bisects the reservation are also places within such exclusive Federal jurisdiction.

It was settled by the Supreme Court in Fort Leavenworth R. Co. vs. Lowe, 114 U. S. 525, and C. R. I. & P. Ry. Co. vs. McGlinn, 114 U. S. 542, as to the Fort Leavenworth Reservation in Kansas that the Federal jurisdiction over the reservation rests upon a different foundation and has different scope from the Federal jurisdiction over the seat of Government in Washington and those places within the States which the Federal Government has purchased for the purposes and in the manner specified in article 1, section 8, of the Constitution.

The lands upon which the Fort Robinson Military Reservation is situate were public lands and belonged to the United States when Nebraska was admitted to the Union, and by the act of admission the lands came under the jurisdiction of the State. When the Federal authorities set them aside for its military purposes, the State made

cession of its jurisdiction over the lands to the United States. The two legislative enactments are set out and considered by Judge Siras in his opinion in the Ladd case, supra. The act of cession and the acceptance thereof by the United States constituted a convention and agreement, and the Federal jurisdiction rests upon that and is limited accordingly. In those cases where the Government purchases lands with the consent of the State in accordance with, and for the purposes specified in, the constitutional provision the Federal jurisdiction is absolute, but, as the military reservation of Fort Robinson was not so acquired, the language of the Supreme Court in the Lowe case, supra, is applicable. The court says:

"The military reservation of Fort Leavenworth was not * * * acquired by purchase with the consent of Kansas. And her cession is not of exclusive legislative authority over the land, except so far as that may be necessary for its use as a military post."

The court also says:

"It is for the protection and interests of the States, their
16 people and property, as well as for the protection of the people generally of the United States, that forts, arsenals and other buildings for public uses are constituted within the States. As instrumentalities for the execution of the powers of the general Government, they are, as already said, exempt from such control of the States as would defeat or impair their use for those purposes, and if for their more effective use a cession of legislative authority and political jurisdiction by the State would be desirable, we do not perceive any objection to its grant by the legislature of the State. Such cession is really as much for the benefit of the States as it is for the benefit of the United States. It is necessarily temporary, to be exercised only so long as the places continue to be used for the public purposes for which the property was acquired or reserved from sale. When they cease to be thus used the jurisdiction reverts to the State."

Again in the McGlinn case, supra, the Supreme Court further said on the same subject:

"It is competent for the legislature of a State to cede exclusive jurisdiction over places needed by the general Government in the execution of its powers, the use of the places being, in fact, as much for the people of the States as for the people of the United States generally, and such jurisdiction necessarily ending when the places cease to be used for those purposes.

And further in the same case:

"The Government of the State of Kansas extended over the reservation and its legislation was operative therein, except so far as the use of the land as an instrumentality of the general Government may have excepted it from such legislation."

In the case of Benson vs. U. S., 146 U. S. 325, the court held that a murder committed within the limits of the Fort Leavenworth Military Reservation was cognizable in the Federal court although done upon a part thereof let out temporarily for farming. The court said:

"It is contended by appellant's counsel that * * * jurisdiction passed to the general Government only over such portions of the reserve as are actually used for military purposes and that the particular part of the reserve on which the crime charged was committed was used for farming purposes. But in matters of that kind the courts follow the action of the political department of the Government. The entire tract has been legally reserved for military purposes. U. S. vs. Stone, 69 U. S., 2 Wall. 525. The character and purposes of its occupation having been officially and legally established by that branch of the Government which has control over such matters, it is not open to the courts on a question of jurisdiction to inquire the actual uses to which any portion of the
17 reserve is temporarily put. There was therefore jurisdiction in the Circuit Court."

These cases are reviewed by the Supreme Court in the very recent case of Arlington Hotel vs. Fant, 278 U. S. 459, and the principles announced in the cases are adhered to and applied to the facts there presented. It appeared that a hotel was being operated on land leased by the United States for the purpose within Hot Springs National Park, and the question was whether it was within the exclusive jurisdiction of the United States. The court said:

"We think that the history of this Hot Springs National Park, as shown by the legislation leading to its establishment and circumstances which the court may judicially notice, is such that the small tract whose jurisdiction is here in question (i. e., the hotel property) may be brought within the principal of the Low case and other cases already cited."

The court held that all the forty-four springs from which the healing waters came were properly brought within the exclusive national jurisdiction, and that police protection, preservation, and control over them were properly with the National Government, saying further:

"Nor is the constitutional basis for acquisition any less effective because the springs thus kept safely available for the Federal purpose do in the abundance of their flow also supply water sufficient to furnish aid to the indigent and to those of the public of the United States who are able to pay for hotel accom'odation on the little park surrounding the hospital and the springs. Benson v. United States, supra, and Williams v. Arlington Hotel Co., 22 F. (2d) 669."

The special act of Congress granted the Chicago & Northwestern Railroad Company a right of way over and across the lands within the Fort Robinson Reservation and a perpetual easement for the purpose of operating a railroad on said lands. The corporation accepted the grant, took possession of the land, and has continuously operated its main line of railroad over it ever since. The action of Congress in turning the land over to the railroad company for railroad purposes was obviously an abandonment of any Fed-

eral use of the land for military purposes. The relinquishment of the use and possession of the land by the Government was permanent, and there is nothing in the special act to indicate any intention other than that the corporation should permanently use the land granted as railroads universally use their right-of-way
18 lands for their own profit and public service as carriers. In the case of Utah and Northern Railway vs. Fisher, 116 U. S. 30, the Supreme Court considered the effect of a similar grant of railroad right of way across the Fort Hill Indian Reservation in the Territory of Idaho and said:

"By force of the cession thus made (that is, the acts of Congress granting right of way for the construction and operation of the railroad) the land upon which the railroad and other property of the railroad are situated was, so far as necessary for the construction and working of the road, withdrawn from the reservation. The road and the property thereupon became subject to the laws of the Territory relating to railroads as if the reservation had never existed."

In that case the parties stipulated that the railroad and its property were "upon the reservation," but the court said (p. 33) that the stipulation had to be read "with reference to the legislation of Congress and therefore as only establishing that the road and property are within the exterior boundaries of the reservation." So in this case the railroad is in no proper sense upon the Fort Robinson Reservation. It is merely within the exterior boundaries thereof. In fact, it bisects the reservation. The court decided in the case referred to that the power to tax the railroad property (an attribute of sovereignty) was in the Territory.

There is here no question of a temporary use of a part of the reservation such as might be permitted or sanctioned in the discretion of the commanding officer on the reservation as considered in the Benton case, supra. The abandonment of military for civil and of governmental for railroad corporation purposes was completed by the special act of Congress and possession taken and maintained by the railroad company. Comparison of the dates shows that the act of Congress relinquishing the railroad right of way was passed before the first act of cession by the State legislature. The fact is not controlling. When Congress made the grant to the railroad company, and the railroad company accepted it and acted upon it by taking possession, the Government's control and jurisdiction over the strip of land ceased. It never thereafter undertook to regulate or control the railroad company in the operation of tne road except through the interstate commerce regulations ap-
19 plicable to all roads). The ruling made as to fences considered by the Nebraska Supreme Court in the Anderson case, supra, were regulations of the military reservation and not of the railroad.

In the case of Clairmont vs. U. S., 225 U. S. 551, a question arose upon a prosecution for introducing liquor into the Indian country.

The accused had liquor on a train operated on the right of way of the Northern Pacific Railway passing through the Flathead Indian Reservation in Montana. The Indian reservation was Indian country and under Federal jurisdiction for the purpose of carrying out Federal obligations toward the Indians resident there. The inconvenience of splitting Federal and State jurisdiction in criminal cases was apparent and doubtless was the occasion for pursuing the litigation to the Supreme Court. The prosecution admitted the usual test of Indian country was extinguishment of Indian titles and that the titles were extinguished over the railroad right of way. It relied upon the difficulty of Federal protection of its Indians against liquor. The court held that the Indian land title had been extinguished as to the lands constituting the railroad right of way, and therefore the railroad right of way ceased to be Indian country and became subject to the laws and jurisdiction of the State. The facts are not identical with those here under consideration, but the conclusion demonstrates that the mere difficulty of enforcing State authority over a strip of land extending through an area under Federal jurisdiction is not controlling.

While the railroad company here is permanently occupying and using its right of way for the operation of its railroad, it can not be said that the Government is exclusively occupying and using the land for any governmental purpose. The decisions of the Supreme Court make the continued occupation and user by the Government for a governmental purpose the test of sovereignty. There is an inconvenience in having an area of country under Federal sovereignty and a strip of land running through it under State sovereignty. But the Federal power must not be extended on account of any supposed convenience. As the Federal Government was not in occupation or control of the right of way and tracks of the railroad company or the trains operated by the railroad company upon its own right of way, the place where the crime is charged to have been committed was not within the territorial jurisdiction of this court.

The plea to the jurisdiction of the court ought, therefore, to be sustained. The question, however, is of importance. The order dismissing the case for want of jurisdiction and discharging the prisoner will not be entered until time is accorded the Government to review the decision if it shall be so advised.

[File indorsement omitted.]

In United States District Court

[Title omitted.]

Notice of appeal

Filed Dec. 3, 1929

The above-named defendant and his attorneys will take notice that the United States of America appeals, or will appeal within the

time provided by law to the Supreme Court of the United States, from the judgment of this court made and entered herein November 5, 1929, sustaining defendant's plea to the jurisdiction of this court and ordering that the defendant be discharged and this action be dismissed.

That said appeal is taken by the United States of America for the purpose of reviewing the proceedings had upon the hearing of defendant's said plea to the jurisdiction of this court and for the purpose of reviewing said judgment of this court sustaining said plea of the defendant to the jurisdiction of this court and for the purpose of having the indictment of the defendant returned by the grand jury reinstated and the defendant ordered by said Supreme Court of the United States to be placed on trial upon the charges set forth in said indictment.

Dated this 29th day of November, 1929.

UNITED STATES OF AMERICA,
By GEO. A. KEYSER,
Assistant United States Attorney
for the District of Nebraska.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 1st day of December, 1929, I received this notice of appeal, and on the 3rd day of December, 1929, I served the same upon the within-named Francisco Unzeuta and also on S. L. O'Brien, one of the attorneys of record for the said Francisco Unzeuta. Both served at Chadron, in Dawes County, State and District of Nebraska, by delivering to and leaving with each of them a copy thereof, with all the indorsements thereon.

D. H. CRONIN,
United States Marshal for the District of Nebraska,
By PARLEY HYDE,
Deputy United States Marshal.

[File indorsement omitted.]

22 In United States District Court

[Title omitted.]

Petition for appeal

Filed Dec. 3, 1929

Now comes the plaintiff and appellant, United States of America, by James C. Kinsler, United States attorney for the district of Nebraska, and plaintiff, conceiving itself aggrieved by the final order and judgment of this court made and entered November 5, 1929, in the above-entitled cause sustaining defendant's special plea in bar—that is to say, in sustaining defendant's plea to the jurisdiction of

this court, dismissing the indictment, and ordering the release of the defendant and the Government witnesses, Manuel Cardones and Eriberts Contreras, said final order and judgment being as follows:

"*Judgment of the court*

"This cause having heretofore been submitted to the court upon the defendant's plea to the jurisdiction, the court, upon full consideration of the said plea and of the indictment herein returned, finds that this court is without jurisdiction over the alleged offense set forth in the indictment to which said plea is directed.

"The court finds that the United States of America has not exclusive jurisdiction over the strip of land comprising the right of way of the Chicago and Northwestern Railway Company through the Fort Robinson Military Reservation in the State of Nebraska, nor upon said railway company's train of cars situate thereon whereon the homicide charged in said indictment is alleged to have been committed.

"The court finds that the granting of said right of way to the said railway company was an abandonment by the United States of its use of said right of way for military purposes, and thereby the United States ceased to have exclusive jurisdiction over the same, to all of which findings the plaintiff is allowed an exception.

"It is therefore ordered by the court that the said plea to the jurisdiction of this court be, and the same is hereby sustained and that the defendant, Francisco Unzeuta, be and he is hereby discharged and this action dismissed, and the United States marshal is directed to release him from custody and also to release Manuel Cardones and Eriberts Contreras, who are held in custody as witnesses for the Government, to which the plaintiff is allowed an exception.

23 "But the United States attorney for the District of Nebraska here gives notice that the United States intends to perfect an appeal from this judgment of the court and asks that the defendant be not discharged until such appeal may be perfected.

"It is therefore ordered by the court that this judgment be not given effect so far as it relates to the discharge from custody of the said defendant and the witnesses above named until thirty days from and after the date hereof, but that upon the perfecting of said appeal the said defendant and the said witnesses be, and they are hereby, granted the privilege of entering into their own recognizance to appear in court in answer to the said indictment so returned against them in the event that the appellate court reverses this judgment.

"Dated this 4th day of November, 1929.

"J. W. WOODROUGH,
"*United States District Judge.*"

does hereby appeal from said final order and judgment of this court to the Supreme Court of the United States for the reasons specified

in the assignments of error, which are filed herewith, and plaintiff prays that this appeal may be allowed and that a citation may be issued as provided by law, and that a transcript of the record, proceedings, and papers upon which said final order and judgment of this court was made, duly authenticated, may be sent to said Supreme Court of the United States.

Dated this 2nd day of December, 1929.

JAMES C. KINSLER,
United States Attorney,
Attorney for plaintiff and appellant.

[File indorsement omitted.]

24 In United States District Court

[Title omitted.]

Assignments of error

Filed Dec. 3, 1929

The United States of America, plaintiff and appellant, now comes with its petition for allowance of appeal and assigns the following errors of the trial court upon which plaintiff and appellant will rely in the prosecution of its appeal to the Supreme Court of the United States from the final order and judgment of the trial court made and entered herein November 5, 1929, namely:

1. The trial court erred in sustaining defendant's special plea in bar—that is, in sustaining defendant's plea to the jurisdiction of the trial court.

2. The trial court erred in dismissing the indictment which was returned against the defendant by United States grand jury at the April, 1929, term of the United States District Court for the district of Nebraska, Omaha division, and duly transmitted to the Chadron division of said United States District Court for the district of Nebraska, charging the defendant with first-degree murder committed on the Fort Robinson Military Reservation located in the district of Nebraska and within the jurisdiction of said United States District Court for the district of Nebraska, Chadron division.

3. The trial court erred in finding and holding "that this court is without jurisdiction over the alleged offense set forth in the indictment" to which defendant's plea to the jurisdiction of the trial court "is directed."

4. The trial court erred in finding and holding "that the United States of America has not exclusive jurisdiction over the strip of land comprising the right of way of the Chicago and
25 Northwestern Railway Company through the Fort Robinson Military Reservation, in the State of Nebraska, nor upon said railway company's train of cars situate thereon whereon the homi-

cide charged in said indictment is alleged to have been committed."

5. The trial court erred in finding and holding "that the granting of said right of way to the said railway company was an abandonment by the Unted States of its use of said right of way for military purposes, and thereby the United States ceased to have exclusive jurisdiction over the same."

6. The trial court erred in ordering and adjudging that defendant's plea to the jurisdiction of the trial court "be and the same is hereby sustained."

7. The trial court erred in ordering and adjudging "that the defendant, Francisco Unzeuta, be and he is hereby discharged and this action dismissed."

8. The trial court erred in ordering, adjudging, and directing "and the United States marshal is directed to release him (defendant) from custody."

9. The trial court erred in ordering, adjudging, and directing "and the United States marshal is directed * * * also to release Manuel Cardones and Eriberts Contreras, who are held in custody as witnesses for the Government."

All of which is respectfully submitted.

Dated this 2nd day of December, 1929.

JAMES C. KINSLER,
United States Attorney,
Attorney for Plaintiff and Appellant.

[File indorsement omitted.]

26 In United States District Court

[Title omitted.]

Order allowing appeal

Filed Dec. 3, 1929

Upon reading the petition of the plaintiff and appellant, United States of America, dated December 2, 1929, for the allowance of an appeal to the Supreme Court of the United States, and on consideration of the assignments of error presented therewith, it is by the court hereby

Ordered that the appeal as prayed for be and it is hereby allowed and that a certified transcript of the record and proceedings be forthwith transmitted to the Supreme Court of the United States, and it appearing that this appeal is taken by direction of a department of the Government of the United States—to wit—the Department of Justice, it is further

Ordered that said appeal shall operate as a supersedeas and that no bond, obligation, or security shall be required from the plaintiff

and appellant, United States of America, either to prosecute its said appeal or to answer in damages or costs.

Dated this 2nd day of December, 1929.

J. W. WOODROUGH,
United States District Judge
for the District of Nebraska.

[File indorsement omitted.]

27 [Citation in usual form showing service on Francisco Unzeuta filed Dec. 3, 1929, omitted in printing.]

28 In United States District Court

[Title omitted.]

Præcipe for transcript of record

Filed Dec. 3, 1929

The clerk of said United States District Court for the district of Nebraska, Chadron division, is requested to immediately prepare and forthwith transmit to the Supreme Court of the United States at the City of Washington, in the District of Columbia, a transcript of the record in the above-entitled criminal action and include therein the following:

1. Report of the United States grand jury drawn from the territory comprising the Omaha, Norfolk, Chadron, Grand Island, and North Platte divisions of the district of Nebraska, and sitting in the Omaha division of the United States District Court for the district of Nebraska, at the April, 1929, term of said court and made September 5, 1929, that: "This day the grand jury returns in open court an indictment against Francisco Unzeuta, the defendant herein," etc.

2. Said indictment of the defendant returned by said United States grand jury at said April, 1929, term of said United States District Court for the district of Nebraska, Omaha division.

3. Certificate transferring indictment and case from the Omaha division to the Chadron division.

4. Defendant's special plea in bar—that is to say, defendant's plea to the jurisdiction of the trial court.

5. Final order and judgment of the trial court sustaining defendant's said special plea in bar—that is to say, defendant's plea to the jurisdiction of the trial court.

6. Opinion of the trial court or memorandum on plea to jurisdiction filed herein and giving the court's reasons for rendering said judgment.

7. Notice of appeal to the Supreme Court of the United States with proof of service.
8. Petition for allowance of appeal.
9. Assignments of error.
10. Order allowing appeal.
11. Citation with proof of service.
12. This præcipe for transcript of record and proof of service.
13. Clerk's certificate of transcript of record.

JAMES C. KINSLER,
United States Attorney,
Attorney for Plaintiff and Appellant.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return, that on the 3rd day of Decem. 1929, I received this præcipe for transcript, and on the 3rd day of December, 1929, I served the same upon the within-named Francisco Unzeuta and also on S. L. O'Brien, one of the attorneys of record for the said Francisco Unzeuta. Both served at Chadron in Dawes County, State and district of Nebraska, by delivering to and leaving with each of them a copy thereof with all the indorsements thereon.

D. H. CRONIN,
United States Marshal for the District of Nebraska.
By PARLEY HYDE,
Deputy United States Marshal.

[File indorsement omitted.]

[Clerk's certificate to foregoing transcript omitted in printing.]

In Supreme Court of the United States

Statement of points upon which appellant will rely and designation of parts of record to be printed

Filed Dec. 19, 1929

Statement

I

Appellant will rely upon the following point in the above-entitled cause:

1. That the court below erred in sustaining the plea to the jurisdiction and dismissing the pending indictment.

II

Omitting pages 1, 2, 5, and 6, the record as filed should be inted.

CHARLES E. HUGHES, Jr.,
Solicitor General.

O. R. LUHRING,
Assistant Attorney General.
W. H. RAMSEY, *Attorney.*

[e indorsement omitted.]

dorsement on cover:] File No. 34,640. Nebraska, D. C., U. S. a No. 509. The United States of America, appellant, vs. Fran- o Unzeuta. Filed December 9, 1929. File No. 34,640.

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